

lawsuit and subsequent thereto. The dispute has been brought to issue before the Court by way of Cobb's Motion to Compel [Dkt. 743], and the subsequent Response [Dkt. 799], Reply [Dkt. 824], Cobb's Supplemental Brief in Support [Dkt. 947], and finally, the plaintiffs' Response to the Supplemental Brief in Support [Dkt. 960], to which the instant motion is addressed.

2. Although Peterson is not a movant with regard to the subject Motion to Compel, it is an interested party, and is similarly situated to Cobb in that it requires access to plaintiffs' environmental testing documents and data, which cannot be duplicated through any other means, in order to properly prepare its defense. Peterson lends its unqualified support to Cobb's Motion to Compel, and agrees that the sampling and testing data and documents in the possession of plaintiffs' are being withheld under an improper claim of "attorney work product."

3. In their *Response to "Supplemental Brief in Support of Defendant Cobb-Vantress, Inc.'s First Motion to Compel,"* plaintiffs represent to the Court that "Other Poultry Integrator Defendants agree that materials such as the ones Cobb-Vantress seeks to compel are protected by the work product doctrine." [Dkt. 960 caption Section 3, p. 5]. Plaintiffs further assert that Cobb's position "is contradicted by the position taken by several other Poultry Integrator Defendants," and that "they agree" that the subject documents are protected from discovery. *Id.* at 5-6. In an attempt to support their representation of Peterson's position, plaintiffs cite the Court to the *Responses of Defendant, Peterson Farms, Inc. to State of Oklahoma's July 10, 2006 Set of Requests for Production. Id.* at 6-6 and Ex. "3" thereto.

4. Plaintiffs' representation that Peterson agrees with their position with regard to the subject discovery dispute is materially false. Peterson's responses to plaintiffs' requests for production clearly reflect that since the plaintiffs were seeking the very types of information they

are asserting are protected from disclosure at the point in time when the ultimate determination of the validity of this claim of work product protection is at issue before the Court, Peterson had no choice but to respond in a manner that protected and reserved its rights pending the Court's decision.¹

5. Peterson brings the instant Motion to Strike not because plaintiffs set forth an argument that Peterson's discovery responses somehow undermined Cobb's Motion to Compel, but because plaintiffs strained their argument into impermissible territory: they made a knowingly false affirmative representation to the Court that Peterson agreed with their position. Plaintiffs should not be allowed to insert such false and scandalous statements about Peterson in briefing to which Peterson is not a party, thereby precluding Peterson's ability to directly respond. Accordingly, these statements should be stricken from plaintiffs' *Response* [Dkt. 960].

WHEREFORE, Peterson respectfully requests the Court strike Section 3 of *State of Oklahoma's Response to "Supplemental Brief in Support of Defendant Cobb-Vantress, Inc.'s First Motion to Compel"* [Dkt. No. 960, pp. 5-7], together with any other relief the Court deems just and appropriate.

¹ Plaintiffs' argument with regard to the Defendants' responses to the requests to produce environmental testing data in their possession is painfully transparent. Plaintiffs seem to believe for the Defendants to be faithful to their position with regard to the discoverability of such data and documents they should turn over their data while awaiting the Court's decision on the Motion to Compel, while the plaintiffs comfortably withhold theirs. Peterson's discovery responses correctly address this concern, and reflect that supplementation will be provided once the controversy is resolved.

Respectfully submitted,

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